

**STATEMENT OF CONSIDERATION RELATING TO**

**405 KAR 10:015**

**Energy and Environment Cabinet**

**Division of Mine Permits**

**(Not Amended After Comments)**

**405 KAR 10:001**

**(Amended After Comments)**

- I.** The public hearing on 405 KAR 10:001 and 405 KAR 10:015, scheduled for April 24, 2019, at 5:00 p.m. at the Energy and Environment Cabinet's Training Room C was held but no comments were received at the hearing; however, written comments were received during the public comment period ending on April 30, 2019.

- II.** The following person submitted written comments:

<u>Name and Title</u>	<u>Agency/Organization/Entity, Other</u>
Peter Morgan, Senior Attorney	Sierra Club Environmental Law Program

- III.** The following person from the promulgating administrative body responded to the written comments:

<u>Name and Title</u>	<u>Agency/Organization/Entity, Other</u>
John Small, Commissioner	Department for Natural Resources
George Seay, Deputy Commissioner	Department for Natural Resources
Michael Mullins, Env. Sci. Cons. Sr.	Department for Natural Resources
Jeff Baird, Director	Division of Mine Permits
Jeff Harmon, Deputy General Counsel	Office of General Counsel

**IV. Summary of Comments and Responses**  
**405 KAR10:001 and 405 KAR 10:015**

**405 KAR 10:001**

**(1) Subject Matter: Long Term Treatment Definition**

**(a) Comment: Peter Morgan, Sierra Club Environmental Law Program**

The proposed regulatory changes include the addition of a new definition for “long-term treatment” at 405 KAR 10:001(26): “‘Long term treatment’ means the use of any active or passive water treatment necessary to meet water quality effluent standards, but does not include Total Suspended Solids or Total Dissolved Solids, at the time a permit or any affected permit increment attains phase I bond release standards as determined by the cabinet pursuant to 405 KAR 10:040.” Because that definition expressly excludes two forms of water pollution associated with surface coal mining – total dissolved solids and total suspended solids – it conflicts with the federal SMCRA program and may not be approved.

**(b) Response:** The department understands the comment offered by the Sierra Club and has amended the definition to remove the exclusionary language.

**405 KAR 10:015**

**(1) Subject Matter: Calculation for the Amount of Long-term Treatment Bond**

**(a) Comment: Peter Morgan, Sierra Club Environmental Law Program**

Kentucky’s proposed amendments would increase the time period used to calculate the amount of the financial assurance instrument from twenty years to twenty-five years. Twenty-five years remains too short of a time period to ensure that there will be adequate funds available to address long-term pollution treatment.

**(b) Response:** The department does not agree with this comment. The calculation previously used included a 20-year multiplier. However, this amendment does not use a 25 year multiplier as indicated in the comment. The new language that was inserted in place of “20 years” is “a factor of 25”. The removal of the term “year” addresses the Office of Surface Mining Reclamation and Enforcement’s concern that the use of the term “year” indicated the bond was time limited and did not address the concept of treatment in perpetuity. It should also be noted that Section 10 of 405 KAR 10:015 authorizes the cabinet to adjust the amount of a bond if acreage in the permit area or increment is either increased or decreased or the cabinet determines that the cost of future reclamation, restoration, or abatement work has changed. This allows the Cabinet to reassess the long-term treatment bond at any time when conditions change to ensure sufficient funds are available to pay for treatment to ensure protection of water quality. The department will not amend the administrative regulation in response to this comment.

**V. Summary of Statement of Consideration and Action Taken by Promulgating  
Administrative Body**

**405 KAR 10:001. Definitions for 405 KAR Chapter 10.** Comments were considered and the following changes are suggested:

**Page 6**

**Section 1(26)**

**Lines 2 and 3**

After "effluent standards", delete the following:

, but does not include Total Suspended Solids or Total Dissolved Solids.

**Page 6**

**Section 1(26)**

**Line 3**

After "attains phase", insert "one (1)"

Delete "1"